

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

UNITED STATES OF AMERICA

v.

CRIMINAL NO. 2:00-00109-01

CARLOS REYES

MEMORANDUM OPINION AND ORDER

Pending before the court is defendant's motion, brought pursuant to 18 U.S.C. § 3582(c)(2), asking the court for a reduction in his sentence based on a subsequent reduction in the applicable sentencing guideline. (Doc. # 106). On November 1, 2010, pursuant to the Fair Sentencing Act of 2010, the United States Sentencing Guidelines were amended, resulting in reductions in the guidelines in Section 2D1.1 for cocaine base. These temporary, emergency amendments to the Guidelines took effect on November 1, 2010. Permanent amendments implementing the Act were promulgated on April 6, 2011, with an effective date of November 1, 2011. Subsequently, the Sentencing Commission voted to give retroactive effect to the permanent amendments. Pursuant to a Standing Order entered on October 7, 2011, this case was designated for Standard consideration.

The court has received and considered the Original Presentence Investigation Report (PSI), the Judgment and Commitment Orders and Statement of Reasons, addendum to the PSI from the Probation Office, memoranda filed by the Federal Public

Defender on behalf of defendant, defendant¹ pro se,² and the United States, and other matters of record. The court has also considered the applicable factors under 18 U.S.C. § 3553(a), consistent with § 3582(c)(2), and public safety.

Having reviewed the materials of record, the court has determined that the motion must be **DENIED**. As the Federal Public Defender and the United States note, the guideline range applicable to defendant has not been lowered as a result of the amendment.

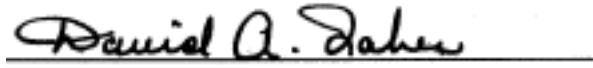
The Clerk is **DIRECTED** to send a copy of this Memorandum Opinion and Order to defendant, counsel of record, the United States Probation Office, and the United States Marshal for the Southern District of West Virginia.

¹ Defendant filed a motion to extend the deadline for filing an opposition to the memorandum submitted by the Federal Public Defender on his behalf. (Doc. No. 110). That motion is **GRANTED** and his opposition is deemed to have been timely filed.

² Defendant filed a pro se opposition in response to the memorandum filed by the Federal Public Defender. (Doc. No. 111). In his opposition, Reyes contends that the drug quantities attributable to him at sentencing are incorrect and were not proven. The court does not agree. Furthermore, even if defendant was correct that his relevant conduct was overstated, a motion pursuant to 18 U.S.C. § 3582(c) is not the proper vehicle to address this claim given that proceedings under 18 U.S.C. § 3582(c) "do not constitute a full resentencing of defendant." United States v. Dunphy, 551 F.3d 247, 251-52 (4th Cir. 2009). If defendant wishes to pursue this claim, he should contact the Clerk's Office regarding his desire to pursue a habeas case.

It is SO ORDERED this 20th day of July, 2016.

ENTER:

A handwritten signature in black ink, reading "David A. Faber", is written over a horizontal line.

David A. Faber

Senior United States District Judge